THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19882 OF 2005

DATED 09.09.2005

M/S.Alpha Hotel & Stores, Opp.Railway Station,

Secunderabad.

…PETITIONER

AND

Commissioner, Municipal Corporation of Hyderabad, Hyderabad

And another

…RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19882 OF 2005

ORDER:

The petitioner Concern obtained lease of the premises No.7-1-6/2/3/4, Subhash Road, Secunderabad, from Church of South India Trust Association, in 1956. The

petitioner allegedly developed the premises and running the hotel. When Municipal Corporation of Hyderabad initiated steps for widening the road and conducted survey, apprehending demolition of the structures likely to be affected by road widening, the petitioner filed a writ petition before this Court. The same being W.P.No.16857 of 2001 was disposed of by this Court on 3.8.2005 directing the respondents to dispose of the representation made by the petitioner. It appears the officials of the second respondent again visited the premises on 05.09.2005 and taken measures and marked a portion of the building for demolition, which is likely to be affected by road widening. Therefore, the petitioner filed the present writ petition alleging that the respondents are demolishing the petitioner's premises without initiating the proceedings under Land Acquisition Act or without due process of law.

It is the case of the respondents that the owner of the premises has given consent to part with the land/building likely to be affected. However, it is not denied that the petitioner who is the tenant of the petitioner's premises was not given any notice.

As held by a Full Bench of this Court in **M/s.Ushodaya Publications v Commissioner, Municipal Corporation of Hyderabad,** the Corporation has to obtain consent even from the tenant without which road widening work cannot be taken to unless MCH takes action for acquisition of land as per Law. Therefore, unless and until due process of law is followed, the petitioners cannot be evicted nor their structures can be demolished by MCH. In **P.Lakshmana Rao v. Executive Officer,** a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. The principles laid down by the Division Bench are as follows.

> (1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.
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> (2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.
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> (3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.
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> (4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.
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> (5). In case of demolition of private property, the authorities

concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

Accordingly, while ordering *status quo* as on today and giving opportunity to the MCH to acquire the land of the petitioner's lease premises, if so required, in accordance with law. The writ petition is accordingly disposed of.

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(V.V.S.RAO,J)

09.09.2005.

pln

Note: Issue order copy by 12.09.2005.

(By order)

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